

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re MARCUS C. JOY,
Petitioner.

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) No. C 09-5216 CRB (PR)
) ORDER OF DISMISSAL
) (Docket # 4)
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Petitioner, a prisoner at California State Prison, Sacramento, has filed a pro se petition for a writ of habeas corpus alleging inadequate medical care. He also seeks leave to proceed in forma pauperis.

Based solely on his affidavit of poverty, petitioner's request to proceed in forma pauperis (docket # 4) is GRANTED. But the petition for a writ of habeas corpus is DISMISSED without prejudice to filing a civil rights complaint under 42 U.S.C. § 1983.

Although the Supreme Court has not addressed whether a challenge to a condition of confinement may be brought under habeas, see Bell v. Wolfish, 441 U.S. 520, 526 n.6 (1979), the Ninth Circuit has held that habeas jurisdiction is absent, and a § 1983 action proper, where, as here, a successful challenge to a prison condition will not necessarily shorten the prisoner's sentence. Ramirez v.

SO ORDERED.


CHARLES R. BREYER
United States District Judge